



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: General Atronics Corporation

File: B-272685

Date: October 23, 1996

Alfred J. Verdi, Esq., for the protester.

William H. Carroll, Esq., Dykema Gossett, for Mikros Systems Corporation, an intervenor.

Debra Buck Haworth, Esq., John C. Hughes, Esq., and Andrei Kushnir, Esq., Department of the Navy, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Proposed awardee's proposal is not mathematically unbalanced and therefore, could not properly be rejected as materially unbalanced, where there has been no showing of nominal prices for some items and enhanced prices for other items, and where the awardee's price basically remains level over the base and option years of the contract.

DECISION

General Atronics Corporation (GAC) protests the proposed award of a contract to Mikros Systems Corporation under request for proposals (RFP) No. N00039-96-R-0030(S), issued by the Department of the Navy, Space and Naval Warfare Systems Command, for common shipboard data terminal set hardware, training, and ancillary support services. GAC generally contends that Mikros's proposal is unbalanced and should not be considered eligible for award.

We deny the protest.

The RFP was issued as a total small business set-aside and contemplated an award on the basis of initial proposals to the low-priced, technically acceptable offeror for firm line item quantities for the base period and for option quantities for fiscal year 1996 through fiscal year 2000. The RFP described a complex scheme for the evaluation of price proposals.

The RFP basically provided that an offeror's evaluated price for each fiscal year would be determined by adding together the following price elements: (a) prices for firm hardware line items;¹ (b) the average of the unit prices of the government's preselected hardware option order quantities;² (c) prices for optional training line items; (d) prices for on-call engineering services; and (e) prices for interim support items. An offeror's evaluated price for each fiscal year would be added together to arrive at the offeror's total evaluated price.

The RFP also provided that the individual price elements within a fiscal year, as listed above, and an offeror's evaluated price for the sequential fiscal years would each, respectively, be weighted in descending order of importance. Percentage weights were not disclosed in the RFP.³ The RFP generally described the weights for the individual price elements and fiscal years in terms of an element or fiscal year being either "relatively" or "significantly" more important than the next single and/or combination of elements or fiscal years.

Finally, the RFP advised that a materially unbalanced proposal could be rejected as unacceptable. The RFP defined an unbalanced proposal as one based on prices for basic and option quantities which were significantly less than cost for some items and on prices which were significantly overstated for other items.

¹Although not clearly stated in the RFP, the agency intended that the total price for the firm line items would be calculated by multiplying the unit price times the quantity for line item No. 0001, and then by adding this extended price to the extended prices for the other firm line item quantities.

²For price element (b), offerors were required to complete a pricing matrix for incremental option quantities of five items (lot sizes of 1 to 5/small incremental quantities through 71 to 75/large incremental quantities, if applicable). The preselected option quantities were not disclosed in the RFP. Prior to opening and evaluating proposals, the agency selected a low, medium, and high data point for a particular item in order to identify over the range of incremental option quantities for the item three possible option exercise scenarios. Prices for the preselected option quantities were averaged; the average unit price was used for evaluation purposes.

³Percentage weights totaled 100 percent.

GAC and Mikros, both small business concerns, submitted timely proposals. The following is a summary of GAC's and Mikros' raw unit prices for price elements (a) and (b):

MIKROS		GAC	
Base--\$[deleted]	-----	Base--\$[deleted]	-----
Small Incremental	Large Incremental	Small Incremental	Large Incremental
FY 96--\$[deleted]	\$[deleted]	FY 96--\$[deleted]	\$[deleted]
FY 97--\$[deleted]	\$[deleted]	FY 97--\$[deleted]	\$[deleted]
FY 98--\$[deleted]	\$[deleted]	FY 98--\$[deleted]	\$[deleted]
FY 99--\$[deleted]	\$[deleted]	FY 99--\$[deleted]	\$[deleted]
FY 00--\$[deleted]	\$[deleted]	FY 00--\$[deleted]	\$[deleted]

The contracting officer concluded, based on the price evaluation scheme described in the RFP, that Mikros' total weighted evaluated price was approximately 15-percent lower than GAC's total weighted evaluated price. In accordance with the terms of the RFP, the agency proposes to award a contract to Mikros, the low-priced, technically acceptable offeror.

GAC challenges the agency's evaluation of price proposals, principally contending that Mikros' proposal was unbalanced, making the proposal ineligible for award.⁴

Our review of the record does not support GAC's contention that Mikros submitted a materially unbalanced proposal. There are two aspects to unbalancing: mathematical unbalancing--where an offer is based on nominal prices for some of the work and overstated prices for other work, and material unbalancing--where the offer is mathematically unbalanced and there is a reasonable doubt that award

⁴GAC also complains that the agency did not strictly follow the price evaluation scheme described in the RFP, but rather, followed the terms of the amended source selection plan (SSP) in determining that Mikros was the low-priced, technically acceptable offeror. It is the evaluation scheme in an RFP, not internal agency documents, such as an SSP, to which an agency is required to adhere in evaluating proposals and in making the source selection. Eccles Assocs., Inc.; Deloitte Touche Tohmatsu ILA Group Ltd., B-260486.6; B-260486.7, Oct. 17, 1995, 95-2 CPD ¶ 179. Here, the record shows that the agency did follow the RFP in evaluating price proposals. The agency also did a second evaluation using the amended SSP. Under this evaluation, Mikros was also the low-priced offeror by approximately 15 percent.

based on the mathematically unbalanced offer will result in the lowest overall cost to the government. GTE Customer Networks, Inc., B-254692.2, Feb. 24, 1994, 94-1 CPD ¶ 143.

Here, the highest unit price in Mikros' proposal is for the firm hardware line items in the base period. Considering the incremental hardware option quantities, Mikros' pricing scheme is relatively level. For the first three fiscal years, there is a slight increase in unit prices over time, with the differential remaining constant as incremental quantities increase, and with these unit prices remaining less than Mikros' unit price for the base period. The last two fiscal years show decreased unit prices, with the unit prices for the final fiscal year being a few hundred dollars more than the unit prices for the prior fiscal year. Mikros' unit prices decrease from the earlier fiscal years to the later fiscal years by approximately 10 percent. [Deleted].

In sum, Mikros structured its price proposal in a relatively level manner, spreading its costs over the term of the contract. Generally, where there are price differences, these differences reflect higher unit prices for smaller quantities and lower unit prices for larger quantities. There has been no showing of nominal prices for some items and enhanced prices for other items, or that Mikros' price does not remain basically level over sequential fiscal years. Therefore, we have no basis to conclude that Mikros' proposal is mathematically unbalanced,⁵ and for this reason, we need not consider whether Mikros' proposal is materially unbalanced. Id. Accordingly, we conclude that the contracting officer reasonably determined that Mikros submitted the low-priced, technically acceptable proposal.⁶

⁵Using the same analysis, it appears that GAC's proposal may be mathematically unbalanced. GAC's highest unit price is for the firm hardware line items in the base period. Regarding the incremental hardware option quantities, GAC did not propose a level pricing structure. Rather, GAC's unit prices appear understated for smaller quantities and overstated for larger quantities. Over the 5 fiscal years, GAC's prices generally increase by approximately 30 percent. [Deleted].

⁶There is no support in the record for GAC's speculation that Mikros gained a price advantage because it allegedly had knowledge of an engineering change proposal (ECP). The record shows, in fact, that there is no ECP from which Mikros, or any other offeror, could have obtained any competitive advantage.

GAC also maintains that Mikros plans to use government-owned facilities and equipment to perform the contract, contrary to the terms of the RFP. The RFP provided that any government-owned facilities, including production and test equipment, which were in the possession of an offeror, were not to be used to
(continued...)

In its post-award protest, GAC raises a number of other arguments concerning the evaluation of price proposals, e.g., that the RFP did not include the appropriate regulatory clause addressing the evaluation of options; that the percentage weights for price elements and fiscal years were not disclosed in the RFP and that there was no indication that these weights would total 100 percent; and that the RFP did not clearly state whether unit or extended prices would be used to evaluate price element (a). These arguments constitute challenges of apparent solicitation improprieties which were not timely protested prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324.

In addition, we affirm our prior dismissal of GAC's post-award argument that the agency failed to answer its pre-proposal questions concerning the bases for the evaluation of price proposals prior to the firm's proposal submission. Contrary to GAC's position, it is not relevant to our determination of timeliness that the agency was under the mistaken belief that it had provided answers to GAC's questions prior to GAC's proposal submission. Rather, GAC knew prior to the closing time that its questions had not been answered. Again, this matter involves an apparent solicitation impropriety not timely protested prior to the closing date. Id.

The protest is denied.

Comptroller General
of the United States

⁶(...continued)

support the offeror's price proposal. Offerors were required to certify in their price proposals that they prepared their proposals consistent with the terms and conditions in the RFP, including those involving the referenced prohibition. Mikros and GAC each provided the required certification, and we have no basis to believe that Mikros, in performing the contract, will not act in accordance with its certification. In the event, however, that Mikros does use government-owned facilities and equipment in performing the contract, an allegation in this regard would involve a matter of contract administration which is within the jurisdiction of the agency and for review by a cognizant board of contract appeals or a court of competent jurisdiction, not our Office. Bid Protest Regulations, 4 C.F.R. § 21.5(a) (1996); Specialty Plastics Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD ¶ 228.